J.C.T.Ltd. vs. Rajasthan Minerals Development Syndicate

SB Civil 1st Appeal No.57/1990

Date of Order: 28th March, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.S.L.Jain for the appellant/s
Mr.J.L.Purohit for the respondent/s.

Heard learned counsel for the parties.

The plaintiff filed a suit for the recovery of amount spent by it on the cost of the consignment and freight charges. The consignment of French Chalk Powder was ordered by the plaintiff appellant from the respondent defendant. That was received by it. After receiving the same , it is alleged by the plaintiff appellant that the powder was sub-standard and, therefore, rejected it for use after chemical examination. Since the goods were not of the quality which was ordered, the plaintiff asked the respondent to return the amount of goods and return the freight charges.

The defendant contested the claim and said that the

case of the plaintiff is not based on cogent reasons . In the Order Form no specific quality has been mentioned. The Order Form , as produced in the judgment of the trial court, show that it has to be up to the standard of last supply. No specification, other than this, was mentioned in the Order Form. The case of the defendants were that the goods were received by the plaintiff on 15.01.82 and they had known about the defects on 15.01.82 or soon thereafter . No communication was immediately addressed in this regard.

So much so in the letters written to the defendant on 06.03.82, 23.02.82 and 04.02.82, Annexures A/2, A/ 3 and A/ 4 no question was raised regarding the quality of goods. However, complaint was regarding the torn bags. The complaint regarding the quality of French chalk powder was an afterthought. For reasons known to the plaintiff, this question was raised at a very late stage.

The trial court, after considering the case of the parties, came to the conclusion while deciding issue No.2, that the case of the plaintiff is not made out. The trial court held that the plaintiff has failed to establish that substandard goods were sent and the goods sent were not in accordance with the order dated 29.11.82.

The learned counsel for the appellant urged that as and when the consignment is asked for, then that is required to be of the standard of which the consignee expects. Here the consignee has not sent the pre-set standard , therefore, he is precluded from raising the objection. The respondent has submitted objection which is only an after thought. In the earlier communication the plaintiff only complained of the tearing of the gunny bags and not of the quality of the consignment.

I have heard the learned counsel, and have given my thoughtful consideration.

The goods , if were substandard, should have been complained in the first instance. But the first complaint, which was sent from the appellants to the defendant , was to the effect that the package material was not good and the bags were torn and money was demanded on that score. This is settled principle of civil law that as and when a demand is made it has to be made in regard to the entire claim. The first letter addressed by the appellant show that they had no grudge regarding the quality of the consignment. Further the witnesses of the appellant have themselves admitted that there is grit available in the French chalk powder and that is the best

case of the appellant. In view of the fact that as and when a French chalk powder is supplied there would be grit , the case of the appellant cannot be said to have been proved as pleaded.

In that view of the matter, the findings of the trial court are not liable to be disturbed. No force , the appeal is dismissed. The order of the trial court dismissing the suit is maintained.

(BHAGWATI PRASAD), J.

L.George